IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
A.O. No. 490 of 2004

Smt. Pranita W/o Sewa Ram
R/o Sellakuai, Pargana Puchawa Dun
District Dehradun ... appellant.

Versus

1- Surendra Singh Tomar S/o Srichand Tomar
R/o Q- 40/1, Old Area, O.F.D. Ranipur,
Dehradun.

2- Keshar Singh S/o Dhanu R/o Samalta
P.S. Chakrata, Dehradun.

3- Oriental Insurance Company Ltd.
Through its Regional Officer, The Oriental
Insurance Company Easly Hall,
Rajpur Road Dehradun Respondents.

Sri Naresh Agarwal, learned counsel for the appellant.
Sri T.A. Khan, learned counsel for the Insurance Company.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 15-06-2006

This appeal, U/S 173 of the Motor Vehicles Act, 1988, has been filed against the judgment and award dated 30-9-2003, passed by M.A.C.T./Addl. District Judge/II F.T.C. Dehradun, in MACP No. 64/2004 Sewa Ram and others Vs. Surendra Singh Tomar and others, whereby the claimants were awarded compensation of Rs. 64,500/-- along with 6% per annum interest. The Tribunal also directed that if the compensation amount will not be paid to the claimants within 1 ½ months, the rate of interest will be 9% in place of 6%. The compensation amount was directed to be paid by the Oriental Insurance Company.

2- Briefly stated the facts of the case are that on 8-9-2003 Manish Garg along with his friends Swaroop and Sahid was going to Sellakui from Dehradun in Motorcycle No. U.A. 07- 2663 as pillion rider. At about 2 P.M. when the Motorcycle reached near the shop of Anand Thapa on Chakrauta Road, suddenly jeep No. U.P. 07-D/ 7157 reached there. The jeep was being driven rashly and negligently by its driver Keshar Singh and the jeep dashed the Motorcycle, due to which Manish Garg sustained grievous injuries. His bones were fractured. The injured was brought to C.M.I. Hospital where the doctor referred him to Chandigarh for treatment but in the way he succumbed to his injuries. At the time of accident the deceased Manish Garg was 21 years of age. He was doing the tuition work and was earning Rs. 3000/- per month. The claimants are parents and brother and sisters of the deceased. They have claimed Rs. Ten lacs as compensation.

3- The Opposite Parties/ owner and driver of the offending jeep No. U.P. 07-D -7151 contested the claim petition by filing joint W.S. They alleged that the offending jeep was insured with Oriental Insurance Company and its driver was possessing valid driving licence. It was also alleged that the deceased was not riding on the scooter at the time of accident and the jeep was not involved in any accident.

4- The Oriental Insurance Company filed W.S. and alleged that the deceased was unmarried and the parents are the only legal heirs of the deceased. It was also alleged that at the time of accident three persons were riding on the offending Motorcycle, more than the prescribed number of passengers. The Insurance Company also pleaded that the insurer of the Motorcycle has not been arrayed as party and the claim petition is bad for non-joinder of necessary party.

5- The Tribunal framed relevant issues on the basis of pleadings of parties. The claimants in support of their claim produced Sewa Ram as P.W.1 and also filed copies of F.I.R., site plan, charge sheet, inquest report, post mortem report, driving licence etc. The O.Ps. did not adduce any oral evidence. However the owner and the driver filed photo copies of driving licence and insurance cover note.

6- The learned Tribunal on hearing learned counsel for the parties and perusing the record awarded Rs. 64,500/- as compensation to the claimants along with interest @ 6% per annum and in case the compensation was not paid within 1 ½ months, the rate of interest was fixed as 9% per annum, against the Insurance Company.

7- Being dissatisfied with the compensation amount awarded by the Tribunal the claimants have preferred this appeal for enhancement of the award.

8- We have heard learned counsel for parties and perused the record.

9- It has been submitted by the learned counsel for the claimant/appellant that the Tribunal has failed to appreciate the legal and factual position of the case and committed gross error law as the notional income assessed by the Tribunal is very low. It is also submitted that the Tribunal did not consider that the age of the deceased was only 21 years and he had a vast career in his life. It is also submitted that the Tribunal did not award the compensation under the head, loss of love and affection. It is also submitted that the rate of interest awarded by the Tribunal is very meager. The learned counsel for the appellant further submitted that the Tribunal has not adopted the correct multiplier in awarding the amount of compensation in favour of the claimant/appellant.

10- The record shows that the appellant is the mother of the deceased Manish Kumar Garg. The evidence on record further shows that the deceased was going on a motorcycle on which three persons were riding at the time of the accident. This motorcycle dashed with jeep No. U.P. 07-D-7157 which was being driven by Keshar Singh in a very rash and negligent manner. The motorcycle in which the deceased was travelling as a pillion rider, was driven by one Swaroop who also succumbed to injuries in this accident. The claimants have established this issue by adducing evidence that the offending jeep in question was rash and negligent. Neither the driver of the jeep nor its insurer adduced any evidence before the court below to contradict this fact that the offending jeep in question was not rash and negligent. Therefore this issue had been rightly decided by the Tribunal that the jeep in question was rash and negligent and on account of the same it hit the motorcycle which resulted this accident in which Manish Kumar Garg was seriously injured and he ultimately died on account of the same.

11- As far as the amount of compensation is concerned, the claim petition indicates that the deceased was aged about 21 years at the time of the accident and he used to earn Rs. 3,000/- per month from tuitions. The deceased was unmarried and age of the parents indicated in the claim petition is 50 and 45 respectively. In the evidence P.W.1 Sewa Ram, who is the father of the deceased, has deposed that in view of the date of birth shown in his driving licence, his age comes to 64 years. Therefore in case if the age of father of the deceased is taken as 64 years at the time of the accident then in any case the age of the mother, who is the appellant before this Court, can be assessed round about 59 to 60 years at the time of the death of the deceased.

12- As the deceased was unmarried, therefore the age of the parents of the deceased for awarding the amount of compensation would be relevant and keeping in view the age of the parents of the deceased the Tribunal has rightly adopted the multiplier of 6. We are also of the view that the claimants are entitled for the amount of compensation after adopting the multiplier of 6 only.

13- As far as the income of the deceased is concerned, the claimants have not adduced any evidence in order to show that the deceased had been earning any money by imparting the tuitions. P.W.1 Sewa Ram has deposed in his evidence that the deceased passed only 12th class, one year prior to the accident. The age of the deceased as has been disclosed by the father of the deceased in his deposition comes to about 20 years, at the time of his death, as he has stated that the year of the birth of the deceased is 1983. This witness has also stated that there was no document available in order to show as to who are the children to whom the deceased used to impart tuitions. This witness also could not tell the name of any of the children to whom the deceased used to impart tuitions. Therefore in absence of any evidence to show the income of the deceased, the principle of notional income would be applicable and in view of this, the income comes to Rs. 15,000/- per annum. Out of this amount if 1/3rd is to be deducted against the personal expenses of the deceased then the financial dependency of the claimants comes to Rs. 10,000/- per annum. Thus, keeping in view the age of the claimants as well as the income of the deceased and by adopting the multiplier of 6 the total amount of compensation comes to 10,000/- X6= Rs. 60,000/-. The claimants are also entitled to an amount of Rs. 2000/- for the funeral expenses as well as Rs. 2,500/- for loss of estate. Therefore on the basis of the aforesaid calculation the

total amount of compensation to be awarded in favour of the claimants comes to Rs. 64,500/-.

14- On the basis of assessment of evidence on record we come to the conclusion that the Tribunal has rightly awarded the amount of ompensation in favour of the claimants. However the rate of interest indicated in the impugned judgment and award dated 30-9-2003 is concerned, the same does not require any interference.

15- This appeal lacks merit and is liable to be dismissed.

16- Accordingly the appeal is dismissed. The judgment and award dated 30-9-2003, passed by M.A.C.T./Addl. District Judge/II F.T.C. Dehradun, in MACP No. 64/2004, is hereby confirmed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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